(14,252.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 240.

THE CENTRAL OHIO RAILROAD COMPANY AS REORGANIZED AND THE BALTIMORE AND OHIO RAILROAD COMPANY, PLAINTIFFS IN ERROR,

vs.

THE CITY OF COLUMBUS, FOR THE USE OF MICHAEL ENRIGHT AND MICHAEL NEALON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 10, 1894.

1 Supreme Court of the United States.

THE CENTRAL OHIO RAILROAD COMPANY as Reorganized and The Baltimore and Ohio Railroad Company, Plaintiffs in Error,
vs.
THE CITY OF COLUMBUS, for the Use of Michael Enright and Michael Nealon, Defendant in Error.
} Assignment of Errors.

And now come the said plaintiffs in error, The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company, and say that in the record and proceedings of the supreme court of Ohio, certified copy of which is hereto attached, there is manifest error in this, to wit:

The court erred in affirming the judgments of the circuit and common pleas courts.

First. It appears from the record of said courts that the original assessment was invalid because made without any notice to these plaintiffs in error, and was a taking of their property for such assessment without due process of law.

And secondly. The assessment made under section 2289 of the Revised Statutes of Ohio, as amended March 9, 1883, was invalid for the reason that this amended act was passed long after the rights of the parties in this suit had attached, and in both of which particulars the rights of the plaintiffs in error under the Constitution and laws of the United States were invaded and violated.

2 Third. The said judgment was given in favor of the said defendant in error, whereas by the laws of the land it ought to have been given in favor of the said plaintiffs in error.

Whereupon the said plaintiffs in error ask that the said judgment may be reversed, annulled, and held for naught, and that they may be restored to all things they have lost by reason thereof.

J. H. COLLINS,
Attorney for Plaintiffs in Error.

3 In the Supreme Court of the State of Ohio.

Be it remembered that heretofore, to wit, on the 29th day of June, A. D. 1886, came the Central Ohio Railroad Company as Reorganized and the Baltimore and Ohio Railroad Company and filed in the supreme court of the State of Ohio their petition in error to the circuit court of Franklin county, Ohio; which said petition in error is in the words and figures following, to wit:

Supreme Court of Ohio.

THE CENTRAL OHIO RAILROAD COMPANY as Reorganized and The Baltimore and Ohio Railroad Company, Plaintiffs in Error,
vs.
THE CITY OF COLUMBUS, for the Use of Michael Enright and Michael Nealon, Defendant in Error.
} Petition in Error.

The said plaintiffs in error, The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company, both corporations, here show to the court that in the record of the proceedings and judgment of the circuit court of the county of Franklin and State of Ohio, in the proceedings in which the above-named plaintiffs in error were plaintiffs and the above-named defendant in error was defendant (a certified copy of the journal entry in said case is hereto attached and the original papers and pleadings therein are herewith filed), there is manifest error in this, to wit:

4 Said circuit court erred in finding that there was no error in the proceedings and judgment of the court of common pleas, and erred in affirming the judgment of said court.

Whereupon the said plaintiffs in error pray that said judgment of said circuit court be reversed and held for nought.

J. H. COLLINS,
Attorney for Plaintiffs in Error.

The State of Ohio, Franklin County, Circuit Court. (January Term, 1886).

THE CENTRAL OHIO RAILROAD COMPANY as Reorganized and The Baltimore and Ohio Railroad Company, Plaintiffs,
vs.
THE CITY OF COLUMBUS, for the Use of Michael Enright and Michael Nealon, Defendant in Error.
} Certified Copy of Journal Entry.

This day came the parties, and this cause came on for hearing upon the petition in error, the transcript, and the original papers and pleadings from the court of common pleas of Franklin county, Ohio, and was argued by counsel and submitted to the court. On consideration whereof the court find there is no error in said proceedings and judgment of said court of common pleas.

It is therefore considered by the court that the judgment of said court of common pleas aforesaid be, and the same hereby is,

5 affirmed, and that the defendant in error recover from the plaintiffs in error its costs; being of opinion that there was reasonable ground for proceedings in error, allow no penalty.

It is further ordered that a special mandate be sent to the common pleas court of Franklin county for execution upon this judg-

ment. To all of which findings, judgments, and orders the said plaintiffs in error, by their counsel, except.

The State of Ohio, Franklin County, Circuit Court.

THE CENTRAL OHIO RAILROAD COMPANY as Reorganized and The Baltimore and Ohio Railroad Company, Plaintiffs, *vs.* THE CITY OF COLUMBUS, for the Use of Michael Enright and Michael Nealon, Defendants.	Petition in Error. (Filed October 15, 1885.)

The said plaintiffs in error, The Central Ohio Railroad Company as Reorganized and The Baltimore & Ohio Railroad Company, here show that in the record of the proceedings and judgment of the court of common pleas of said county of Franklin in the cause where said defendant in error, The City of Columbus, for the use of Michael Enright and Michael Nealon, was plaintiff and said plaintiffs in error were defendants there is manifest error in this, to wit:

1. Said court erred in overruling the demurrer to the petition therein.

2. The said court erred in not making a finding upon the issues in the record and in making a finding upon issues not in the record of said case.

6 3. The court erred in rendering judgment therein in the findings so made.

A copy of the docket and journal entries in said cause is hereto attached, and the original papers therein are herewith filed.

Whereupon the plaintiffs pray that said judgment of said court of common pleas be reversed and held for nought, and for other proper relief in the premises.

J. H. COLLINS,
Attorney for Plaintiffs in Error.

The State of Ohio, Franklin County, Court of Common Pleas.

THE CITY OF COLUMBUS, for the Use, etc., Plaintiff, *vs.* THE CENTRAL OHIO RAILROAD COMPANY *et al.*, Defendants.	Certificate of Journal Entries. (Filed October 15, 1885.)

I, John J. Joyce, clerk of the court of common pleas within and for the county of Franklin, do hereby certify that the following entries and judgments are truly copied from the docket and journal of said court, to wit:

April Term (July 26), A. D. 1883.

This day came the parties and this cause came on to be heard on the demurrer heretofore filed to the petition herein, and was argued by counsel and submitted to the court. On consideration whereof

the court does find said demurrer not well taken and does overrule the same; and, on motion, the defendants are given leave to
7 answer by the 25th day of August, A. D. 1883.

October Term (17th), A. D. 1883.

This day this cause came on for hearing on the petition, the answer of the defendants The Central Ohio Railroad Company as Reorganized—The Baltimore and Ohio Railroad Company, exhibits and testimony and evidence, the defendant The Pittsburgh, Cincinnati and St. Louis Railway Company being in default for plea, answer, or demurrer, and was argued by counsel, and none of the parties hereto demanding a jury the same was waived, and this cause was submitted to the court without the intervention of a jury. On consideration whereof, and having carefully considered the same, the court does find that, by reason of irregularity and defect in the proceeding of the said city council, the assessment set up in the petition has not been properly made against the said defendants or upon the lot of land sought to be charged, and is therefore invalid.

The court further finds from the evidence adduced that expense has been incurred in the improvement of said portion of said street which is a lien upon and properly chargeable on said premises in the petition described in the amount hereinafter found to be chargeable against the same. The court further find that there is due to the plaintiff from the defendant The Central Ohio Railroad Company as Reorganized, on account of expenses incurred as aforesaid, properly chargeable against the premises in the petition described, with interest from the date of the entering of this decree, to wit, October 18, 1883, the sum of eleven hundred and fifty-nine and twenty-one one-hundred-dollars.

8 It is therefore considered by the court that unless the said defendant The Central Ohio Railroad Company as Reorganized shall, within five days from the entering of this decree, to wit, October 18, 1883, pay or cause to be paid to the clerk of this court the costs of this case, taxed at $—, and to the plaintiff the said sum of $1,159.21, with interest from the 18th day of October, 1883, the said premises shall be sold as upon execution for the satisfaction of the amount above found due, and that an order of sale issue therefor to the sheriff of Franklin county directing him to sell said premises as upon execution, and bring the proceeds into court for the further order herein.

October Term (Nov. 20), A. D. 1883.

This day came the parties and this cause came on to be heard on the motion of defendants The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company for a new trial herein, and was argued by counsel and submitted to the court. On consideration whereof the court does find that said motion is not well taken, and does overrule the same; to all of which said defendants, by their counsel, except.

Court of Common Pleas, Franklin County, Ohio.

THE CITY OF COLUMBUS, for the Use of MICHAEL ENRIGHT and MICHAEL NEALON, Plaintiff,
vs.
THE CENTRAL OHIO RAILROAD COMPANY as Reoganized, a Corporation; The Baltimore and Ohio Railroad Company, a Corporation, and The Pittsburgh, Cincinnati and St. Louis Railway Company, a Corporation, Defendants. } Petition.

9 Plaintiff says that it is a city of the second class, duly incorporated and organized under the laws of the State of Ohio and situated in Franklin county, Ohio.

That the defendant The Baltimore and Ohio Railroad Company is a company duly incorporated and organized under the laws of the State of Ohio for the purpose of doing and carrying on a general railway business and traffic; the said defendant, The Central Ohio Railroad Company as Reorganized, and the defendant The Pittsburgh, Cincinnati and St. Louis Railway Company are each companies duly incorporated and organized under the laws of the State of Ohio for the purpose of doing and carrying on a general railway business and railway traffic.

That said defendant, The Central Ohio Railroad Company as Reorganized, was, on the 23rd day of October, A. D. 1882, and has been ever since and now is the owner of and is seized in fee simple of the following-described premises, situated in the city of Columbus, the county of Franklin and State of Ohio, and bounded and described as follows, to wit:

Beginning at the point of intersection of the north line of Mt. Vernon avenue produced westwardly with the west line of Fifth street, thence northwardly with the west line of Fifth street to a point where the south line of Buckingham street produced westwardly intersects the said west line of Fifth street; thence westwardly along the said south line of Buckingham street, so produced as aforesaid, about one hundred and fifty-four and five-tenths (154.5) feet to the intersection of the same with the east line of a tract of land heretofore conveyed to the Columbus and Xenia and the Cleveland, Columbus, Cincinnati and Indianapolis Railroad Companies; thence along said last-named line
10 southerly to the point where the same intersects the said north line of Mt. Vernon avenue produced westwardly; thence along said north line of Mt. Vernon, produced westwardly as aforesaid, easterly to the beginning, being a tract fronting and abutting a distance of 1,068 feet on the west side of said Fifth street, beginning at the north line of Mt. Vernon avenue produced westwardly and extending northwardly therefrom 1,068 feet, and being a part of the tract of land conveyed to the Central Ohio Railroad Company by Robert Neil, by deed dated March 11, 1852, which said Central Ohio Railroad Company afterwards had its name duly changed and became and was and is called the Central Ohio Railroad Company as Reorganized.

14 The said defendant, though often requested to pay the said amount so as aforesaid assessed against its said premises, has always refused and still neglects and refuses to do so.

There is now due to this plaintiff from said defendants on said assessment, including a penalty of five per cent. as provided by law, the sum of eleven hundred and forty-nine and fifty-five one-hundredths dollars, together with interest on the sum of ten hundred and ninety-four and eighty-one one-hundredths dollars thereof from the 26th day of November, A. D. 1882.

By reason of the premises hereinbefore set forth the sum of ten hundred and ninety-four and eighty-one one-hundredths dollars, with penalty and interest as aforesaid, became a valid lien on said premises of said defendant on the 23d day of October, A. D. 1882, and is still a valid and subsisting lien thereon.

The plaintiff says that said defendants, The Baltimore & Ohio Railroad Company and The Pittsburgh, Cincinnati & St. Louis Railway Company, have, or claim to have, some rights or claims to or upon said premises, the exact extent and nature of which this plaintiff is unable with certainty to state.

Wherefore plaintiff prays that they, The Baltimore & Ohio Railroad Company and The Pittsburgh, Cincinnati & St. Louis Railway Company, may be made parties defendant hereto, and set forth their rights and claims, and in default thereof and a sale of the said premises that they may be forever barred from asserting the same, and plaintiff prays for a judgment against the said defendants for said sum of eleven hundred and forty-nine and fifty-five one-hundredths dollars, assessment and penalty, with interest from
15 the 23d day of October, A. D. 1882, upon the sum of ten hundred and ninety-four and eighty-one hundredths dollars thereof, and that said sum of ten hundred and ninety-four and eighty-one one-hundredths dollars, with interest and penalty as provided by law and the ordinances aforesaid, may be declared to be a lien upon said premises from the 23rd day of October, A. D. 1882; that the said lien thereon may be foreclosed and the amount due to the plaintiff by reason thereof may be found, and that, in default of the payment thereof as ordered by the court, the said premises may be sold as provided by law; that out of the proceeds of such sale the amount found due to the plaintiff may be paid with his costs herein; and for all other and further orders, judgments, decrees, and relief as to the court shall seem just.

WILSON & STODDART,
Attorneys for Plaintiff.

STATE OF OHIO, } *ss:*
Franklin County, }

Michael Enright, being duly sworn, says that he is the Michael Enright mentioned in the foregoing petition, and that the matters and things therein set forth are true, as he verily believes.

his
MICHAEL x ENRIGHT.
mark.

Attest: CHAS. E. BONEBRAKE.

Subscribed in my presence and sworn to before me this 14th day of February, A. D. 1883.

JOHN J. JOYCE,
Deputy Clerk of Court.

16 State of Ohio, Franklin County, Court of Common Pleas.

THE CITY OF COLUMBUS, for the Use of Michael Enright and Michael Nealon, Plaintiffs,
vs.
THE CENTRAL OHIO RAILROAD COMPANY *et al.*, Defendants.
} Demurrer. (Filed March 22, 1883.)

And now come the defendants herein, The Central Ohio Railroad Company and The Baltimore and Ohio Railroad Company, and demur to the petition of the said plaintiffs, and for cause show that said petition does not state facts sufficient to constitute a cause of action, and that the same is insufficient in law.

J. H. COLLINS,
Attorney for Defendants.

State of Ohio, Franklin County, Court of Common Pleas.

THE CITY OF COLUMBUS, for the Use of Michael Enright and Michael Nealon, Plaintiff,
vs.
THE CENTRAL OHIO RAILROAD COMPANY as Reorganized *et al.*, Defendants.
} Answer. (Filed August 18, 1883.)

The said defendants, The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company,
17 for answer to the petition of the said plaintiff in this case, say that they deny that the Baltimore and Ohio Railroad Company is a company duly organized and incorporated under the laws of the State of Ohio, but on the contrary say that said corporation was organized under the laws of the State of Maryland; and the said defendants admit that the said Central Ohio Railroad Company as Reorganized is the owner of the lands described in said petition, and that the Baltimore and Ohio Railroad Company is in possession of the same as the lessee thereof; and the defendants deny that there was ever any notice served on the said defendants or either of them on the 11th day of March, 1882, as averred in said petition, or at any other time, and they deny that they had any notice of said contemplated improvement until the same was completed and the bills presented therefor.

As to the other averments of the said petition, not herein expressly admitted, the said defendants have no knowledge with reference to the same, and therefore deny each and all of said averments.

J. H. COLLINS,
Attorney for said Defendants.

STATE OF OHIO, }
Franklin County. }

J. H. Collins, being duly sworn according to law, says that he is the president of the Central Ohio Railroad Company as Reorganized, one of the defendants herein, and that he believes the facts stated in the foregoing answer to be true.

J. H. COLLINS.

Sworn to before me and subscribed in my presence by J. H. Collins this 17th day of August, 1883.

JOHN M. TIBBETS,
[SEAL.] *Notary Public, Franklin County, Ohio.*

18 State of Ohio, Franklin County, Court of Common Pleas.

THE CITY OF COLUMBUS, for the Use of MICHAEL ENRIGHT *et al.*, Plaintiff,
vs.
THE CENTRAL OHIO RAILROAD COMPANY *et al.*, Defendants.
} No. 15085. Motion. (Filed October 18, 1883.)

Now come the defendants herein, The Central Ohio Railroad Company as Reorganized and the Baltimore & Ohio Railroad Company, and move the court to set aside the judgment and decree rendered in this case on the 17th day of the present month and to grant said defendants a new trial herein for the following reasons:

1. The said defendants were not present at said trial, nor represented by counsel, for the reason that the counsel of said defendants had no notice that this case was set for trial on that day, and were taken by surprise therein, and that the counsel for the said defendants intended to be present and defend the case; of which fact counsel for plaintiff had full notice.

2. The finding of the court is against the weight of testimony and is contrary to law.

3. Other causes.

J. H. COLLINS,
Attorney for said Defendants.

19 STATE OF OHIO, }
Franklin County. }

I, John J. Joyce, clerk of the circuit court within and for the county of Franklin, State of Ohio, do hereby certify that the foregoing is a full and true copy of the record of the proceedings and judgment of the circuit court of Franklin county, Ohio, on a proceeding in error wherein The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company were plaintiffs in error and The City of Columbus, for the use of Michael Enright and Michael Nealon, were defendants in error.

Witness my signature and the seal of said court this 28th day of June, 1886.

JOHN J. JOYCE,
Clerk of Court.

20 January Term, 1889, Dec. 17th.

THE CENTRAL OHIO RAILROAD COMPANY as Reorganized *et al.*
vs.
THE CITY OF COLUMBUS, for the Use, &c.

This cause came on to be heard upon the transcript of the record of the circuit court of Franklin county and was argued by counsel. On consideration whereof it is ordered and adjudged by this court that the judgment of the said circuit court be, and the same is hereby, affirmed; and it appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein.

It is further ordered that the defendant in error recover from the plaintiffs in error its costs herein expended, taxed at $—.

Ordered that a special mandate be sent to the court of common pleas of Franklin county to carry this judgment into execution.

Ordered that a copy of this entry be certified to the clerk of the circuit court of Franklin county for entry.

And it is here certified that the said plaintiffs in error, The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company, made and argued two questions in this case, to wit, that it is not shown in this record that the said plaintiffs in error were in any manner advised of the assessments for which judgment was rendered in the courts below, and

21 that said assessments were made in violation of the provisions of the Constitution of the United States, first, by making the same against the said plaintiffs in error without due process of law and, secondly, under the provisions of the statute of the State of Ohio enacted after the rights of the parties to said assessments had been fixed, and also that the statutes of the State of Ohio with reference to assessments of abutting property in cases like this are invalid for the reason that no provision is made for notice of such assessments and the time and place with reference to the same.

22 UNITED STATES OF AMERICA:

The President of the United States to the honorable judges of the supreme court of the State of Ohio, Greeting:

Because in the record and proceedings and also in the rendition of the judgment on the petition in error which is in the said supreme court of the State of Ohio, being the highest court of law or equity of the said State of Ohio in which a decision could be had in said suit between The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company and The City of Columbus, for the use of Michael Enright and Michael Nealon, wherein was drawn in question the validity of a statute of the State of Ohio and the authority exercised under said statute, on the ground

of its being repugnant to the Constitution of the United States, and the decision was in favor of such validity, a manifest error hath happened, to the great damage of the said The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company, as by their complaint appears, we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at
23 Washington on the first Monday of October, A. D. 1890, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable the Chief Justice of the said Supreme Court the 18th day of December, in the year of our Lord one thousand eight hundred and eighty-nine.

THAD. A. MINSHALL,
Chief Justice of the Supreme Court of the State of Ohio.

24 Whereas in a suit lately pending in the supreme court of the State of Ohio, wherein The Central Ohio Railroad Company as Reorganized was plaintiff in error and The City of Columbus, for the use of Michael Enright and Michael Nealon, was defendant in error, a judgment was rendered affirming the judgment of the circuit court of Franklin county, Ohio; and

Whereas the said plaintiff in error, The Central Ohio Railroad Company as Reorganized, has made application for a writ of error from the Supreme Court of the United States to the said the supreme court of the State of Ohio in said cause; and

Whereas by the said judgment of affirmance the said defendant in error, The City of Columbus, for the use of Michael Enright and Michael Nealon, is entitled to a mandate to the said the circuit court of Franklin county, Ohio, to carry said judgment into execution, and that the said plaintiff in error desires to have said judgment superseded — files this bond for that purpose:

Now, therefore, we, The Central Ohio Railroad Company as Reorganized and W. A. Hershiser, jointly and severally, bind ourselves to the said The City of Columbus, for the use of Michael Enright and Michael Nealon, in the sum of three thousand dollars that if the said judgment shall be affirmed, in whole or in part, that the whole or part of said judgment so affirmed we will pay to the said The City of Columbus, for the use of Michael Enright and Michael Nealom, and the costs that have accrued and that may accrue in the said Supreme Court of the United States; and we further un-

dertake that the said plaintiff in error shall duly prosecute
25 *their* said writ of error without unnecessary delay in said court.

Dated this — day of January, 1890.

THE CENTRAL OHIO RAILROAD COMPANY AS REORGANIZED,
By J. H. COLLINS, *President.*
WM. A. HERSHISER. [SEAL.]

STATE OF OHIO, }
Franklin County. }

W. A. Hershiser, surety on the above bond, being duly sworn according to law, says that he is the owner of unincumbered real estate in the county of Franklin, State of Ohio, of the value of more than double the amount of the above bond.

LORENZO D. HAGERTY,
[SEAL.] *Notary Public in and for Franklin County, Ohio.*

The above bond approved this 18th day of June, 1890.

THAD. A MINSHALL,
Chief Justice of Supreme Court of Ohio.

26 *Citation.*

UNITED STATES OF AMERICA:

To The City of Columbus, for use of Michael Enright and Michael Nealon, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the first Monday of October, A. D. 1890, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Ohio, wherein The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable the chief justice of the said supreme court of the State of Ohio this 18th day of December, in the year of our Lord one thousand eight hundred and eighty-nine.

THAD. A. MINSHALL,
Chief Justice of the Supreme Court of Ohio.

The receipt of a copy of the above citation is hereby acknowledged and other or further service thereof waived.

WILSON & STODDART,
Attorneys for Defendant in Error.

Columbus, Ohio, September 11th, 1890.

27 STATE OF OHIO, }
City of Columbus. }

I, U. H. Hester, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing is a full, true, and complete transcript of the proceedings had in the above-entitled cause, including the transcripts from the common pleas and circuit courts, together with the pleadings, judgment, and other proceedings in the supreme court of the State of Ohio as included in the printed record therein filed.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at my office, in the city of Columbus, this 16th day of September, A. D. 1890.

[Seal of the Supreme Court of the State of Ohio.]

URBAN H. HESTER,
Clerk of the Supreme Court of the State of Ohio,
By HORACE M. CROW, *Deputy.*

28 UNITED STATES OF AMERICA:

The President of the United States to the honorable judges of the supreme court of the State of Ohio, Greeting:

Because in the record and proceedings and also in the rendition of the judgment on the petition in error which is in the said supreme court of the State of Ohio, being the highest court of law or equity of the said State of Ohio in which a decision could be had in said suit between The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company and The City of Columbus, for the use of Michael Enright and Michael Nealon, wherein was drawn in question the validity of a statute of the State of Ohio and the authority exercised under said statute, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such validity, a manifest error hath happened, to the great damage of the said The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that
29 then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the first Monday of October, A. D. 1890, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable the Chief Justice of the said Supreme

Court the 18th day of December, in the year of our Lord one thousand eight hundred and eighty-nine.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN,
Clerk of the U. S. Circuit Court, Southern District of Ohio.

30 *Citation.*

UNITED STATES OF AMERICA:

To The City of Columbus, for use of Michael Enright and Michael Nealon, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the first Monday of October, A. D. 1890, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Ohio, wherein The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable the chief justice of the said supreme court of the State of Ohio this 18th day of December, in the year of our Lord one thousand eight hundred and eighty-nine.

THAD. A. MINSHALL,
Chief Justice of the Supreme Court of Ohio.

31 [Endorsed:] Supreme court of Ohio. The Central Ohio Railroad Company as Reorganized and The Baltimore and Ohio Railroad Company, plaintiffs in error, *vs.* The City of Columbus, for the use of Michael Enright and Michael Nealon, defendants in error. Certified copy of record.

Endorsed on cover: Case No. 14,252. Ohio supreme court. No. 240. The Central Ohio Railroad Company as Reorganized and The Baltimore & Ohio Railroad Company, plaintiffs in error, *vs.* The City of Columbus, for the use of Michael Enright and Michael Nealon. Filed October 13, 1890.